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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,828	02/19/2002	Takao Kasai	0445-0318P	2854
2292	7590	11/12/2004	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			KIDWELL, MICHELE M	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 11/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/049,828

Applicant(s)

KASAI ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/19/02 & 5/17/02</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3 and 6 – 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Foreman (US 4,738,677).

With respect to claim 1, Foreman discloses an absorbent article including a liquid permeable topsheet (38), a liquid impermeable backsheet (42) and a liquid retentive absorbent core (44) interposed between the topsheet and the backsheet, said absorbent article being substantially vertically elongated (figure 1) and having an upstanding gather (62), wherein the topsheet (38) has a liquid shut off region (92) in a linear shape (figure 1) which prevents liquid migration within the topsheet, and the liquid shut off region is located at an area outside the periphery of the absorbent core (figure 2) and is formed independent of a joined section between the topsheet and a sheet material for forming the upstanding gather as set forth in figure 2.

With reference to claim 3, Foreman discloses a topsheet that comprises a thermally fusible material (col. 7, lines 1 – 9). With respect to the product by process limitation, the applicant is reminded that:

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"[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted)

As to claim 6, Foreman discloses an absorbent article wherein the article does not have said upstanding gather at both or one of the longitudinal end portions of the article, and the liquid shut off region is located over the widthwise direction of the article at the longitudinal end portion(s) where the upstanding gather is not located as set forth in figure 1.

Regarding claim 7, Foreman discloses a method for manufacturing an absorbent article including a liquid permeable topsheet (38), a liquid impermeable backsheet (42) and a liquid retentive absorbent core (44) interposed between the topsheet and the backsheet, said topsheet (38) having a liquid shut off region (92) in a linear shape (figure 1) for preventing liquid migration within the topsheet, said method comprising preliminarily forming the liquid shut off region at the topsheet and then arranging the topsheet at a predetermined location of the absorbent article as set forth in col. 3, lines 50 – 53. The examiner contends that the preliminary forming of the liquid shut off region at the topsheet may be considered the concept of providing the article with such a region. The actual arrangement of the topsheet at a predetermined location comes as a result of making the product.

Claims 1 – 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Kitaoka et al. (US 5,662,637).

With respect to claim 1, Kitaoka et al. (hereinafter “Kitaoka”) discloses an absorbent article including a liquid permeable topsheet (1), a liquid impermeable backsheet (2) and a liquid retentive absorbent core (3) interposed between the topsheet and the backsheet, said absorbent article being substantially vertically elongated (figure 1) and having an upstanding gather (10), wherein the topsheet (1) has a liquid shut off region in a linear shape (col. 3, lines 50 – 53) which prevents liquid migration within the topsheet, and the liquid shut off region is located at an area outside the periphery of the absorbent core and is formed independent of a joined section between the topsheet and a sheet material for forming the upstanding gather as set forth in figure 2.

As to claim 2, Kitaoka discloses an absorbent article wherein the topsheet extends outward beyond a basal end of the upstanding gather (figure 2), at least a part of the extended section of the topsheet is joined to the backsheet and the liquid shut off region is located on the extended section of the topsheet as set forth in col. 3, lines 50 – 53.

With reference to claim 3, Kitaoka discloses a topsheet that comprises a thermally fusible material and the liquid shut off region is formed by melting the thermally fusible material as set forth in col. 3, lines 50 – 53.

As to claims 4, Kitaoka discloses an absorbent article wherein the topsheet is not thermally bonded to other sheet materials at the liquid shut off region as set forth in figure 2.

With respect to claim 5, Kitaoka discloses an absorbent article wherein the liquid shut off region is located over a widthwise direction of the absorbent article at both or one of the longitudinal end portions of the absorbent article as set forth in col. 3, lines 50 – 53.

As to claim 6, Kitaoka discloses an absorbent article wherein the article does not have said upstanding gather at both or one of the longitudinal end portions of the article, and the liquid shut off region is located over the widthwise direction of the article at the longitudinal end portion(s) where the upstanding gather is not located as set forth in figure 2.

Regarding claim 7, Kitaoka discloses a method for manufacturing an absorbent article including a liquid permeable topsheet (38), a liquid impermeable backsheet (42) and a liquid retentive absorbent core (44) interposed between the topsheet and the backsheet, said topsheet (38) having a liquid shut off region (92) in a linear shape (figure 1) for preventing liquid migration within the topsheet, said method comprising preliminarily forming the liquid shut off region at the topsheet and then arranging the topsheet at a predetermined location of the absorbent article as set forth in col. 3, lines 50 – 53. The examiner contends that the preliminary forming of the liquid shut off region at the topsheet may be considered the concept of providing the liquid shut off region along the periphery of the combined topsheet and backsheet. The actual

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arrangement of the topsheet at a predetermined location comes as a result of making the product.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday - Friday, 5:30am - 2:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on 571-272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michele Kidwell
Examiner
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